



Citation: Vrantsidis v. Allstate Insurance, 2024 ONLAT 22-002714/AABS

Licence Appeal Tribunal File Number: 22-002714/AABS

In the matter of an application pursuant to subsection 280(2) of the *Insurance Act*, RSO 1990, c I.8, in relation to statutory accident benefits.

Between:

Contantinos Vrantsidis

Applicant

and

Allstate Insurance

Respondent

DECISION

ADJUDICATOR: Brett Bell

APPEARANCES:

For the Applicant: Contantinos Vrantsidis, Applicant
Esan Ince-Mercer, Counsel

For the Respondent: Geoff Wilson, Adjuster
Briana Cott, Counsel

HEARD: In Writing

OVERVIEW

- [1] Contantinos Vratsidis (the “applicant”), was involved in a motor vehicle accident (“accident”) on July 22, 2020, and sought benefits pursuant to the *Statutory Accident Benefits Schedule - Effective September 1, 2010 (including amendments effective June 1, 2016)* (the “Schedule”).
- [2] The applicant was denied benefits by Allstate Insurance (the “respondent”), based on its determination that the applicant’s accident-related impairments were predominantly minor injuries and therefore subject to treatment within the Minor Injury Guideline (“MIG”).
- [3] The applicant disagreed and applied to the Licence Appeal Tribunal - Automobile Accident Benefits Service (the “Tribunal”) for resolution of the dispute.

ISSUES

PRELIMINARY ISSUE

- [4] The following preliminary issue is to be decided:
 - i. The respondent submits that the “attached documents” referred to in the applicant’s written submission as Tabs 1 through 4 should be excluded from evidence pursuant to Rule 9.4 of the *Licence Appeal Tribunal (LAT) Common Rules of Practice and Procedure*.
 - ii. The respondent states that these documents were not received by the respondent at the time of their submission. Further, the respondent submits that the applicant’s written submissions do not indicate the dates of any of the records listed as Tabs 1 through 4, denying the respondent the ability to determine if the Clinical Notes and Records (“CNRs”) submitted by the applicant as part of their written submission go beyond what was previously produced to the respondent.
 - iii. The respondent requests that the Tribunal exclude Tabs 1 through 4 of the applicant’s submission from consideration.

RESULT OF THE PRELIMINARY ISSUE

- [5] I find that the documents referenced by the applicant in their written submission as Tabs 1 through 4 were available to the respondent at the time of their written submission, as evidenced by the inclusion of those documents in Tabs 1 through

12 of the respondent's submission and the reference to said documents throughout the written submission itself.

- [6] The documents available to the respondent at the time of their submission are identical those being considered by the Tribunal as part of this decision.
- [7] The respondent's request to exclude Tabs 1 through 4 from consideration as evidence is denied.
- [8] The remaining issues in dispute are:
- i. Did the applicant sustain predominantly minor impairments as defined s. 3 of the *Schedule* as a result of the accident and is therefore subject to treatment within the \$3,500.00 limit and in the MIG?
 - ii. Is the applicant entitled to \$1,403.72 for chiropractic services in a treatment plan/OCF-18 proposed by Progressive Rehab Clinic, submitted on March 19, 2021?
 - iii. Is the applicant entitled to \$2,200.00 for a psychological assessment in a treatment plan/OCF-18 proposed by Dr. Leon Steiner of Harwood Wellness, submitted on April 8, 2021?
 - iv. Is the applicant entitled to \$1,528.10 for chiropractic services and a TENS unit in a treatment plan/OCF-18 proposed by Progressive Rehab Clinic, submitted on June 10, 2021?
 - v. Is the applicant entitled to the cost of obtaining updated clinical notes and records from Scarborough Chronic Pain & Migraine Clinic in the amount of \$56.50, submitted on September 7, 2021?
 - vi. Is the applicant entitled to interest on any overdue payment of benefits?

RESULT

- [9] I find that:
- i. The applicant has failed to demonstrate that he suffers from injuries that are not defined as minor in the *Schedule*. As a result, he remains within the MIG and its \$3,500.00 limit on treatment.
 - ii. As the applicant remains within the MIG, which has been exhausted, he is not entitled to the treatment plans in dispute, nor interest.

ANALYSIS

The Minor Injury Guideline (“MIG”)

- [10] Section 18(1) of the *Schedule* provides that medical and rehabilitation benefits are limited to \$3,500.00 if the insured sustains impairments that are predominantly a minor injury in accordance with the MIG. Section 3(1) defines a “minor injury” as “one or more of a sprain, strain, whiplash associated disorder, contusion, abrasion, laceration or subluxation and includes any clinically associated sequelae to such an injury.”
- [11] An insured person may be removed from the MIG if they can establish that their accident-related injuries fall outside of the MIG or, under s. 18(2), that they have a documented pre-existing injury or condition combined with compelling medical evidence that demonstrates the condition precludes recovery if they confined to the MIG.
- [12] The burden is on the applicant to show, on a balance of probabilities, that their injuries are outside of the MIG.
- [13] The applicant acknowledges that his injuries are predominantly soft tissue as defined by the MIG. However, the applicant submits that his ongoing neck, shoulder and back pain have become chronic in nature, and three years after the accident, he has not returned to his pre-accident level of functioning or health. The applicant submits that he should be removed from the MIG and is entitled to treatment beyond the \$3,500.00 MIG limit.
- [14] The respondent counters that the applicant sustained soft-tissue sprain/strain injuries as a result of the accident, all of which fall under the definition of minor injuries in the *Schedule*. Further, the respondent holds that there is no evidence of chronic pain with functional impairment that would warrant the applicant’s removal from the MIG. The respondent contends that the applicant should be held within the MIG.

The applicant remains within the MIG

- [15] I find that the applicant has failed to demonstrate, on a balance of probabilities, that he suffers from injuries or conditions that are not predominantly minor in nature as defined in the *Schedule*. Further, he has failed to substantiate claims that he suffers from chronic pain with functional impairment that would preclude recovery if held within the MIG. Accordingly, he remains within the MIG and is subject to its \$3,500.00 limit on treatment.

- [16] As noted in the applicant's own submission, "his injuries are predominantly soft tissue as defined by the Minor Injury Guidelines." After an appointment on October 20, 2020, the applicant's primary physician, Dr. Howard Plant, diagnosed the applicant with a soft tissue injury and referred him to physiotherapy. The applicant also references the examination report of Dr. Pervez Ali of the Scarborough Chronic Pain and Migraine Clinic, dated February 25, 2021, which states the applicant's "signs and symptoms are most consistent with mechanical cervical myofascial neck strain." As noted, strains and sprains fall under the definition of "minor injury" under s. 3(1) of the *Schedule*.
- [17] Both the applicant's submission and Dr. Ali's report state that the applicant reports having difficulty with sports, recreational and daily living activities, but only note that the applicant reports pain while bending and some tenderness in the neck. Neither the applicant nor Dr. Ali provide medical evidence or documentation of ongoing functional impairment or illustrate how any impairment is directly linked to the accident. I agree with the respondent that Dr. Ali did not establish that the applicant's examination results were consistent with the general limitations being claimed by the applicant.
- [18] While the applicant only describes his injuries in vague terms ("continues to experience neck, shoulder and back pain"), his application does not provide any details on how his injuries impair his ability to perform his job. However, Dr. Ali's report includes a note of the applicant claiming ongoing "severe" functional impairment in the workplace, which requires him to lift, carry, bend, work with hands overhead, and climbing stairs or ladders. I place minimal weight on the applicant's claim of severe impairment, given the applicant has continued to work full time, initially taking only three days off work. The applicant also claims in supporting documentation to his application that he requires a colleague to assist with lifting activities, yet as indicated in both *Application for Sick Benefits* documents included with his submission, the applicant notably does not request any workplace accommodations from his employer.
- [19] In contrast, I place significant weight on the comprehensive medical report submitted by the respondent's physiatrist, Dr. Yong-Kyong Michael Ko, on May 31, 2021. In his evaluation, Dr. Ko did not assess any injuries that warrant removing the applicant from the MIG. In addition, the applicant's own responses to Dr. Ko's inquiries do not indicate any injury that would qualify as severe functional impairment.
- [20] For these reasons, I find that the applicant suffered minor injuries from the accident as defined by s. 3(1) of the *Schedule*.

Chronic Pain

- [21] I find that the applicant's claims to suffer from chronic pain due to the accident have not been supported by medical evidence. Rather, the objective medical evidence demonstrates that the applicant suffered minor injuries from the accident. There is minimal indication that these injuries progressed to chronic pain with a functional impairment.
- [22] Chronic pain with functional impairment is not included in the minor injury definition and a finding that the Applicant sustained chronic pain with functional limitations as a result of the accident would permit them to seek treatment outside of the MIG beyond the \$3,500.00 funding limit.
- [23] The American Medical Association *Guides to the Evaluation of Permanent Impairment* ("AMA Guides") provide criteria for evaluating a chronic pain condition. The AMA Guides state that a person must meet at least three of six criteria to support a diagnosis of chronic pain. These criteria are:
- i. Use of prescription drugs beyond the recommended duration and/or abuse of or dependence on prescription drugs or other substances.
 - ii. Excessive dependence on health care providers, spouse, or family.
 - iii. Secondary physical deconditioning due to disuse and or fear-avoidance of physical activity due to pain.
 - iv. Withdrawal from social milieu, including work, recreation, or other social contracts.
 - v. Failure to restore pre-injury function after a period of disability, such that the physical capacity is insufficient to pursue work, family or recreational needs.
 - vi. Development of psychosocial sequelae after the initial incident, including anxiety, fear-avoidance, depression, or nonorganic illness behaviours.
- [24] While the AMA Guides are not a definitive test to determine if someone suffers from chronic pain and the Tribunal is not bound by them, they nevertheless provide a helpful tool in evaluating claims of chronic pain.
- [25] The Tribunal has previously ruled (*V.G. v. Aviva Insurance Canada, 2019 CanLII 22214 (ON LAT)*) that persistent or chronic pain alone is not enough for an

application to fall outside of the MIG; it must be accompanied by functional impairment severe enough to limit the applicant's ability to work and/or daily life.

- [26] While the applicant does claim to suffer chronic pain and includes Dr. Ali's diagnoses of mechanical cervical myofascial neck strain and chronic pain the applicant has not been formally diagnosed with chronic pain syndrome by his primary physician or any specialists who have examined him.
- [27] Using the AMAs Guides' criteria as a guideline, there is minimal medical evidence that the injuries sustained by the applicant would support a diagnosis of chronic pain. In the consultation report dated February 25, 2021, Dr. Ali noted some tenderness in the applicant's neck and shoulders, but the report did not include any injuries severe enough to warrant removal from the MIG.
- [28] The applicant has not submitted any evidence of abuse of or dependence on prescription drugs or other substances. The applicant has also not shared evidence to suggest he has an excessive dependence on health care providers, family, or friends. The applicant immediately returned to work and has not requested any accommodations from his employer and there has been no evidence of an inability to conduct regular daily activities, which does not suggest physical deconditioning due to disuse or fear-avoidance of physical activity due to pain. Dr. Ali did note the applicant reports difficulty with sports, recreational and daily living activities, but there has no medical evidence to support a severe functional impairment preventing the applicant from conducting these activities. Based on this, I place minimal weight on Dr. Ali's diagnosis of the applicant suffering from chronic pain.
- [29] I continue to place significant weight on the Insurer's Examination ("IE") report dated May 31, 2021, where Dr. Ko noted the applicant had full active Range of Motion ("ROM") in his cervical spine and lumbar spine, as well as active and passive ROM in both shoulders. Dr. Ko did not report any palpation tenderness, only a complaint of pulling pain along the right trapezius during manual strength testing. Dr. Ko did observe pain behaviours and noted self-limiting behaviours, but did not observe any injury preventing the applicant from enjoying a full ROM. This diagnosis directly counters the applicant's claim that his ongoing pain is severely impacting his employment duties or preventing him from partaking in daily or recreational activities.
- [30] While acknowledging the applicant has documented ongoing pain, I find, on a balance of probabilities, that the applicant has failed to demonstrate chronic pain with a functional impairment severe enough to warrant removal from the MIG.

Psychological Injuries

- [31] I find there is no medical evidence to support a claim that the applicant suffers from psychological injuries as a result of the accident, which would warrant removal from the MIG.
- [32] Psychological impairments are not included in the minor injury definition and a finding that the Applicant sustained psychological impairment as a result of the accident would permit them to seek treatment outside of the MIG. An impairment is defined in s. 3(1) of the *Schedule* as a “loss or abnormality of a psychological, physiological or anatomical structure or function.”
- [33] While the applicant included a claim for a psychological assessment as one of the treatment plans/OCF-18 in dispute, the applicant’s submission makes no mention of psychological injury nor is there a reference to any medical evidence to support such a claim, including the CNRs of their family physician, Dr. Plant.
- [34] I agree with the respondent’s position that the applicant has never expressed any concern of psychological sequelae resulting from the accident. Further, the applicant has not received a psychological diagnosis and was not prescribed any medication to treat any psychological condition.
- [35] Based on the absence of any submitted medical evidence, I find that the applicant has not demonstrated that he suffers from a psychological injury that would remove him from the MIG.

Costs of obtaining updated clinical notes and records

- [36] I find the applicant has not provided evidence that the CNRs were requested by the respondent a second time, and the respondent is not required to pay the invoice amount.
- [37] The respondent has submitted they did not request the CNRs again, nor were they necessary. The applicant has not submitted any evidence that contradicts the respondent’s position.
- [38] Based on the evidence before me, I find the applicant is not entitled to the cost of obtaining updated CNRs.

CONCLUSION

- [39] For the reasons detailed above, I find that the applicant suffered minor injuries in the accident. He has failed to demonstrate chronic pain with a functional

impairment or a psychological injury, either of which would warrant removal from the MIG.

- [40] As a result, the applicant remains within the MIG and is subject to its \$3,500.00 limit on treatment.

Treatment Plan

- [41] As the applicant has been found to remain within the MIG and its \$3,500.00 limit on treatment, which has been exhausted, he is not entitled to the treatment plan in dispute, nor interest.

Costs of Obtaining Updated Notes and Records

- [42] As there is no evidence a second request for CNRs was made by the respondent, the applicant is not entitled to the cost of obtaining CNRs.

ORDER

- [43] The application is dismissed and I find that:
- i. The applicant sustained a predominantly minor injury as a result of the accident. He remains subject to the MIG and its \$3,500.00 limit.
 - ii. As the applicant remains within the MIG and its \$3,500.00 limit, which has been exhausted, he is not entitled to the plan in dispute, nor interest.
 - iii. The applicant is not entitled to the costs of obtaining updated clinical notes and records.

Released: July 4, 2024

Brett Bell
Adjudicator